

Amida Anaya,
Plaintiff
v.
Costco Wholesale Corporation,
Defendant

Order Adopting Report and Recommendation, Denying Motion for Summary Judgment as Moot, and Dismissing Case

In this removed personal-injury action, plaintiff Amida Anaya sues Costco Wholesale Corporation for injuries she claims she sustained during a slip-and-fall accident at Costco's Henderson, Nevada, store.¹ After Anaya's counsel withdrew, the magistrate judge ordered Anaya to file a notice stating whether she intends to represent herself.² When she failed to do so, the magistrate judge ordered Anaya to show cause why sanctions should not be imposed for her failure to comply with the court's order.³ Anaya was instructed that her failure to respond to that show-cause order by March 13, 2020, would result in a recommendation that this case be dismissed for failure to prosecute.⁴ Again, Anaya filed nothing. So, the magistrate judge now recommends that I dismiss this action for failure to prosecute and deny the defendant's pending motion for summary judgment as moot.⁵ The deadline to object to that recommendation passed

⁵ ECF No. 27.

1 without objection or any request to extend the deadline to file one. “[N]o review is required of a
2 magistrate judge’s report and recommendation unless objections are filed.”⁶

3 A court may dismiss an action based on a party’s failure to prosecute her case or obey a
4 court order.⁷ In determining whether to dismiss an action on one of these grounds, the court
5 must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
6 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁸

8 The first two factors, the public’s interest in expeditiously resolving this litigation and the
9 court’s interest in managing its docket, weigh in favor of dismissal. The third factor, risk of
10 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
11 from the occurrence of unreasonable delay in filing a pleading ordered by the court or
12 prosecuting an action.⁹ A court’s warning to a party that its failure to obey the court’s order will
13 result in dismissal satisfies the fifth factor’s “consideration of alternatives” requirement,¹⁰ and
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16 ⁶ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas v. Arn*, 474
U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

17 ⁷ *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
18 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
19 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
20 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

21 ⁸ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
22 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

23 ⁹ *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

¹⁰ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

1 that warning was given here.¹¹ The fourth factor—the public policy favoring disposition of
2 cases on their merits—is greatly outweighed by the factors favoring dismissal.

3 Accordingly, IT IS HEREBY ORDERED that the magistrate judge’s report and
4 recommendation **[ECF No. 27] is ADOPTED** in full;

5 IT IS FURTHER ORDERED that this case is DISMISSED without prejudice for failure
6 to prosecute;

7 IT IS FURTHER ORDERED that the Defendant’s Motion for Summary Judgment **[ECF**
8 **No. 23] is DENIED** as moot.

9 The Clerk of Court is directed to ENTER JUDGMENT ACCORDINGLY and CLOSE
10 THIS CASE.

11 Dated: April 13, 2020

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13 U.S. District Judge Jennifer A. Dorsey
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¹¹ ECF No. 26.

1 IT IS FURTHER ORDERED THAT **this case is dismissed**. The Clerk of Court is
2 directed to ENTER JUDGMENT ACCORDINGLY and CLOSE THIS CASE.

3 Dated: April 13, 2020

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U.S. District Judge Jennifer A. Dorsey
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